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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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07/31/2003

TED R. RITTMASER  
FOLEY & LARDNER  
SUITE 3500  
2029 CENTURY PARK EAST  
LOS ANGELES, CA 90067-3021

EXAMINER

DESANTO, MATTHEW F

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/768,196 | <b>Applicant(s)</b><br>LEBEL ET AL. |  |
|                              | <b>Examiner</b><br>Matthew F DeSanto | <b>Art Unit</b><br>3763             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 April 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tune et al. USPN 5,630,710, and further in view of Goedeke (USPN 5,904,708).

Tune et al. discloses a medical system, comprising an ambulatory medical device (MD) [Ref. # 10] comprising MD electronic control circuitry (546) that further comprises at least one MD telemetry system (562, 564, 566) and at least one MD processor (542) that controls, at least in part, operation of the MD telemetry system and

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operation of the medical device, wherein the medical device is configured to provide a treatment to a body of a patient or to monitor a selected state of the body; and b) a communication device (CD) [Ref. # 952] comprising CD electronic control circuitry that further comprises at least one CD telemetry system and at least one CD processor that controls, at least in part, operation of the CD telemetry system and operation of the communication device, wherein the CD telemetry system sends messages to or receives messages from the MD telemetry system, wherein the medical device is comprises an infusion pump (10), and wherein the CD display device is controlled to show a plurality of infusion parameters simultaneously, and wherein a first portion of the MD telemetry system is incorporated into the MD processor and a second portion of the MD telemetry system is external to the MD processor, or wherein a first portion of the CD telemetry system is incorporated into the CD processor and a second portion of the CD telemetry system is external to the CD processor, wherein (1) the MD electronic control circuitry comprises at least one external MD functional module, other than the second portion of the MD telemetry system, that is external to the MD processor, (2) the CD electronic control circuitry comprises at least one external CD functional module, other than the second portion of the CD telemetry system, that is external to the CD processor, (3) the MD processor comprises an internal MD CPU and at least one other internal MD functional module, or (4) the CD processor comprises an internal CD CPU and at least one other internal CD functional module. (Figures 2,25-30,32-41, and entire reference).

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Tune et al. also discloses the communication device with a CD display controlled by at least one CD processor for providing visual feedback to the patient, and wherein the feedback comprises a display of the quantity of a consumable estimated to be remaining in the system (512), wherein the consumable is a drug, and where the medical device wherein infusion parameters can be selected, and where the patient can program (28) there own options into the pump. (Column 3, lines 29-47), but fails to disclose wherein the telemetry device uses RF signals.

Goedeke discloses the use of an implantable pump with telemetry components, wherein the telemetry used is RF telemetry.

At the time of the invention it would have been obvious for one of ordinary skill in the art to combine the disclosed invention of Tune et al. with the teachings of Goedeke because it is well known to use RF telemetry with implantable medical devices, as stated in the entire reference of Goedeke (See Column 1, lines 40 to Column 2, line 6, as well as entire reference).

Therefore, it would have been obvious to combine Tune et al. with Goedeke to obtain the invention as specified in claims 6-10, and 12-15.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tune et al. with Goedeke as applied to claims 6-10 and 12-16 above, and further in view of Er (USPN 6185461).

Tune et al. in combination with Goedeke disclosed the claimed invention except wherein the consumable is either (1) battery power remained in a replaceable CD battery in the communication device and a voltage level on the CD battery is graphically

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depicted with a desired resolution, or (2) battery power remaining in an MD battery in the medical device and a voltage level on the battery is graphically depicted with a desired resolution.

Er discloses a controlled system where the display, displays the battery data and battery longevity estimate graph (Figure 1 and 2 and entire reference).

At the time of the invention, it would have been obvious for a person with ordinary skill in the art to combine Tune et al. and Goedeke medical infusion device with Er replacement time indicator device and display, because according to Er, it is highly desirable to predict when a battery will failure so as to make arrangements for the replacement battery. (Column 2, lines 1-9).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 6-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552.



Matthew DeSanto  
Art Unit 3763  
July 28, 2003



MICHAEL J. HAYES  
PRIMARY EXAMINER